IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8028 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T CORPN

Versus

KARAMSIBHAI J SUVAGIYA C/O SHIRISHBHAI BAVISEE

Appearance:

MR HS MUNSHAW for the Petitioner.

MR GM JOSHI for the Respondent.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 23/08/2001

ORAL JUDGEMENT

1. Rule. Mr.Joshi, learned Advocate, waives service of rule on behalf of the respondent.

With the consent of the parties, the matter is heard finally today.

Heard Mr.Munshaw for the petitioner and Mr.Joshi for the respondent.

2. This petition is filed challenging the order of the Labour Court, Junagadh dated 5.10.1999, passed in Reference (L.C.J.) No.11 of 1998. By the impugned Award, the Labour Court has passed reinstatement order in favour of the respondent workman with 60% back wages. The Labour Court has given cogent reasons at page 48 for setting aside the dismissal order passed by the petitioner-Corporation.

It is not in dispute that the petitioner has remained absent for 27 days between 5.5.1995 and 2.6.1995. Therafter, enquiry was conducted ex parte as the respondent had not remained present in the enquiry. Therafter, after conclusion of enquiry, the petitioner was subjected to dismissal order. The Labour Court, while exercising powers under Section 11A, has come to the conclusion that during 25 years of service, the petitioner had remained absent only on 2-3 occasions. Considering the reasoning of the Labour Court, it cannot be said that the Labour Court has wrongly exercised its jurisdiction while exercising powers under Section 11A of the I.D. Act. In my view also, this is not a fit case in which maximum penalty of removal was required to be passed considering the fact that during the last 25 years of service, the petitioner had remained absent only on two or three times and for that, he was punished. In any case, it cannot be said that the Labour Court has committed any error of law or of jurisdiction in passing the impugned order as the Labour Court is vested with the power under Section 11A of the I.D. Act, which is required to be considered. It cannot be said that this is not a proper case in which the powers of Section 11A are exercised.

3. Mr.Joshi for the respondent also submitted that the respondent workman was suffering from T.B. and even the Labour Court has considered that fact. Mr.Munshaw says that the respondent should have produced the aforesaid material at the time of enquiry so that the Corporation could have taken sympathetic view of the matter. However, since the enquiry has proceeded ex parte and because of his sickness, if the respondent could not remain present in the enquiry proceedings, it cannot be said that there was absolutely no justification on the part of the respondent for not remaining on duty during the relevant time. In any case, this is not at all a case in which penalty of dismissal should have been passed considering the long service of the petitioner.

Considering the facts and circumstances of the case and considering the reasoning given by the Labour Court, I do not think it proper to interfere with the order of the Labour Court as this Court is exercising extraordinary jurisdiction under Article 226/227 of the Constitution and it cannot be said that the Labour Court has committed any error apparent on the face of the record. The petition is required to be rejected and hence, it is rejected.

4. Mr.Joshi has volunteered and has stated that the petitioner is willing to be reinstated with 50% back wages, instead of 60% back wages, as awarded by the Labour Court. The said concession of Mr.Joshi is recorded and in view of the above-said concession, the order of the Labour Court is modified to the limited extent of payment of 50% back wages instead of 60%, as granted by the Labour Court.

With this modification, the rest of the Award of the Labour Court is confirmed. The petition is accordingly disposed of to the aforesaid extent, with no order as to costs. The petitioner is directed to comply with the order of the Labour Court, which is modified by this judgment, within one month from today.

23rd August, 2001 (P.B. Majmudar, J.)

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(apj)